MOBILISING PEOPLE: CONNECTING AGENTS OF CHANGE

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Short Session Report: Game Changers

Session Title: Ending Impunity: Are We Any Closer?
Date & Time: November 07, 2012, 16:30-1800
Report prepared by: Kevin Donegan, Campaign Manager, TI-S

Experts:

Peter Eigen, Founder, Transparency International
Richard Goldstone, former judge and UN investigator
Andrew Mack, Director of the Human Security Report Project, Simon-Fraser University
Markus Hardtke, National Resources Protection Group of Cambodia
Jorge Hage Sobrino, Comptroller General , Government of Brazil

Moderated by: Michela Wrong, Author, Journalist
Session coordinated by:

Main issues raised in kick off remarks. What's the focus of the session?

Peter Eigen said that Transparency International is looking at impunity as it correlates to corruption. "Impunity gives people the feeling they can get away with murder, with corruption," he said. In addition, impunity also fuels corruption.

Eigen emphasized that the anti-corruption movement must look at sanctions at administrative sanctions and not only criminal sanctions. That TI believes sanctions are a very important element of protecting society, and that TI has been able to overcome areas of impunity for corruption, for example through preventing companies from being able to deduct bribes from taxable income through enforcement of the OECD Convention.

Regarding collective action, Eigen said that not only that we have to work together to prevent impunity but also that we have to create a system that avoids a "prisoner's dilemma." (where corrupt officials or governments believe that they will be severely punished if they give up their office)

TI, he said, wants to get everyone excited about no impunity for corruption.

Richard Goldstone said that we must accept that corporations that have strong practices against corruption tend to dilute or abandon those standards when they do business in corrupt countries. And that this is morally unacceptable and socially unacceptable

Goldstone then explained the process and consequences of an investigation into corruption in the UN's Oil For Food program in Iraq that ran from 1995 to 2003. The program allowed an exception from existing international sanctions that allowed Saddam Hussein to sell Iraqi oil, if the proceeds went into escrow in a UN-approved bank account. Funds were then released back to the Iraqi government to pay for essential needs for the Iraqi people.

After allegations of corruption by UN personnel, then UN secretary general ordered Kofi Annan ordered an investigation in 2004. The investigation found that officials of almost all countries participated in corruption. Hussein had successfully ordered a 5% kickback from all sales through the program; The total sales through the program were $100bn. More than $1.5bn was paid to Saddam Hussein. It was not only a fraud on the program but was a fraud perpetrated on the Iraqi people

About 4,500 corporations did business with Iraq, of which approximately 2,500 paid bribes. Leading political figures accepted bribes from Hussein. There were three main observations:

1. The culprits thought they would get away with it
2. 2,000 companies refused to pay bribes and still got contract
3. Oil for food program was too large for UN to control

Goldstone said he believes there is only one way to end impunity for corruption: that there should be a real threat and fear of public exposure for corruption. There was one major lesson: Some of the worst

offenders of corruption in the Oil for Food program went to prison.

Often corrupt practices are not exposed because of scarcity of trained personnel to bring them to light. Goldstone said it would pay handsome dividends if there were more resources for detection.

Andrew Mack described the period between 1998 and 2001 when he was Director of Strategic Planning for UN Secretary General Kofi Annan.

In 98-99, during development of the MDGs he and his team wanted security to be part of the MDGs. But the UN couldn't get member states to agree to security, human rights or corruption in the MDGS. All of these things were extremely sensitive political issues with member states.

Mack described an increase in security broadly over the last 20+ years and declining rates of violence. He said that the number of conflicts has fallen dramatically, as well as the number of terrorist incidents. In 2009, the under-5 child mortality rate improved in 90% of countries involved in war.

He stressed the need for good evidence.

He stated that to reduce sexual violence, the UN would say you have to attack the culture of impunity that allows people to get away with it. And that the UN is good at reducing armed conflict through attacking a culture of impunity.

There is a huge amount of interest in donor states in "fragility." Indicators of fragile states include extreme poverty, poor governance, corruption, conflict. That it's difficult to address one element without addressing other elements at same time.

The humanitarian community in particular takes a "cluster approach" to try to address fragile states in a comprehensive way.

Between 1995-2010, Mack said, the overall level of fragility has declined by 15%. Because all the elements that make up fragility have improved.

Mack highlighted that the human rights literature shows that as the

number of trials went up, the number of human rights abuses went down. That there is a real association, not merely a correlation. And that this is very relevant for impunity for corruption.

Markus Hardtke offered a field perspective: In forestry, he said, we encounter impunity every day. Because we operate in a lawless environment

Natural resource management is about money and power. For the local population it is often about survival. They have no other choice but to do something.

Hardtke said his organization is dealing with impunity on a personal level. The director of his organizatiopn was killed guiding journalists in the field. They were stopped by Cambodian military in service of a logging company. It was the highest profile political killing in Cambodia since 2006.

Commission met for 3 days and did not produce a compelling finding. Courts are not really investigating. But there is international pressure, and there may yet be a resolution in the case.

Impunity is a major problem in the frontier, Hardtke said. There is a lot of money to be made very quickly and government structures are weak, so corruption is systemic.

Loggers pay local officials in an organized way to do what they want.

Often the best way is for the forest communities to do active law enforcement themselves. They patrol, stop illegal transports, they occupy sawmills that are illegal. That has real results. It is very successful.

It does two things:
1) Empowers the local people because they see real consequences of their actions and it engages more people, and it promotes good governance because it goes directly to the problem. Govt officials are forced to choose because they are under pressure. It makes them more accountable because people see which side the officials are on.
2) It exposes the key backers in higher position in government and

business who control the trade because they lose money. You confiscate illegal timber and destroy it. It is a real deterrent against illegal logging.

It is a real game changer because these illegal deals are built on trust. If something disrupts the business, like the community, they lose money. By destabilizing the structure you achieve real results.

Jorge Hage Sobrino said that we are much closer to ending impunity in Brazil than 10 years ago. But we are not where we want to be, he said. Ten years ago, we did not have one specific agency dedicated to preventing and fighting corruption. This happened only in 2003, the first year of President Lula's government.

Also there was no coordination of different agencies related to this problem. E.g. Federal police or the external court of accounts (Tribunal do contas).

As a result of this work, they could start a system independent of the judiciary to remove public officials involved in corruption. The government has removed more than 4000 public officials from the federal administration without having to appeal to the judiciary.

On the supplier side-- companies and corporations—the government publishes a list of companies that are barred from participating in procurement. The law establishes that if one company is debarred by one public agency, the company has no possibility to contract with any other public agency in Brazil.

There are more than more than 1000 government agencies in the country, at all levels. If one agency imposes a sanction before it was never known. The Brazilian government created a national debarment list (black list). Already 5000 companies are forbidden to have contracts with any public body in Brazil.

The government has built a national registry for civil society organizations for joint project partnerships. When an NGO is involved in any illicit activity, they are added to the list. More than 1800 NGOs are now listed, together with public officials, and companies that have been debarred. The list is available online.

Hage said that Brazil needs "an adequate judicial process that is more swift and fluid."

The average time it takes for criminal processes in corruption cases to end in Brazil is 15-20 years.

"Our option to fight impunity was to allow the executive branch to explore all legal possibilities independent from the judiciary." Hage said that Brazil needs the media to press the congress to reform the judiciary: this is needed to get closure and end impunity.

To comply with OECD, Brazil must establish liability for foreign bribery to impose sanctions that reach the property of bribing companies. This will create the possibility to sue in Brazil for transnational bribery. A bill that would do this has been in Congress for 2 years and not been passed.

In addition, a bill to end illicit enrichment of public officials was sent to Congress in 2005 and still has not been passed.

Finally, Hage expressed the need for political party reform. Brazil has 30 political parties, and desperately needs to reform its system of financing political campaigns. The government favours exclusive use of public funds and ending corporate financing of elections.

What initiatives have been showcased

Direct action
Seizing property used in illegal acts, and occupying property used to facilitate illegal, corrupt business

Judicial reform
To ensure an adequately-resourced and independent judiciary

Ending Impunity
That sanctioning corrupt individuals thought to be impune, whether criminally or administratively, empowers people and does justice.

Collecting good evidence
Good evidence informs advocacy strategies

Executive branch administrative regulations
When Congress is unwilling to act, the executive branch can still enact some reforms to end impunity

Highlights: What are the main outcomes of this session? What's next?

- Administrative sanctions are effective, and often much quicker, than criminal sanctions.

- Direct action, if strategically undertaken in the light of stopping illegal activity, challenges impunity and destabilizes high-level arrangements of bribery by corporations of governments

- Civil society pressure speeds up prosecutions in many countries.
- That empowering people through successful people mobilization brings more support and makes corrupt officials and companies reconsider arrangements of bribery

What are the recommendations, follow-up Actions

- Because corruption is so difficult to measure, there is no good cross-national trend data like with child health. An initiative from TI to build a **stronger, long-term data set of corruption** would be very beneficial to the broader anticorruption movement as we move toward post MDG framework,

- NGOs and local NGOs have an important oversight role to promote the independence of the judiciary.

- The judiciary has to be beyond corruption, independent, and accountable to the people.

- When we talk about impunity we don't only talk about criminal courts but also about other sanctions.

- Civil society should look at the various elements of an integrity system and look where the weak points are.

What should be done to create opportunities for scaling up the proven solutions discussed in the session? What and by whom?

Not discussed concretely.

Key Insights Recommended to be included in the IACC Declaration

The IACC calls on the international anti-corruption movement to promote greater people engagement, and provide greater security for anti-corruption activists.

The IACC calls on governments to reduce impunity for corruption, through ensuring an independent, resourced judiciary that is accountable to the people